

### **REMARKS**

Claims 15-51 are pending. Claims 1-14 are canceled as directed to an unelected restriction group. Claims 16, 26, 31, 33, 38 and 48-51 are amended. Support for these amendments come from [0102] of the published application and elsewhere throughout the Specification.

#### **Outstanding Issues:**

- Claims 36-38 are objected
- Claims 31-51 are rejected as indefinite under 35 U.S.C. 112 ¶ 2
- Claims 16-23, 26, 27, 29 and 31-51 are rejected as unpatentable under 35 U.S.C. 103(a) over *Conneely et al.* (US 2001/016289 A1, filed 25 FEB 1999).
- Claims 15-51 are provisionally rejected under the judicial doctrine of obviousness-type double patenting over co-pending US Patent Applications 10/733,621 and 10/728,521.

#### **I. Claims 36-38 are objected**

Applicant has relabeled the claims to reflect their proper status.

#### **II. Claims 31-51 are rejected as indefinite under 35 U.S.C. 112 ¶ 2**

Applicant has amended the claims to specify the use of a therapeutically effective amount of lactoferrin composition. Applicant thanks the Examiner for the Examiner's help in clarifying this point in the claims. Applicant respectfully requests the rejection be withdrawn.

**III.** Claims 16-23, 26, 27, 29 and 31-51 are rejected as unpatentable under 35 U.S.C. 103(a) over *Conneely et al.* (US 2001/016289 A1, filed 25 FEB 1999).

The Examiner has cited *Conneely et al.* for disclosing use of lactoferrin to treat *H. Pylori* induced gastrointestinal injury. Claims 16, 26, 31, 33 and 48-51 have been amended to exclude gastric or duodenal ulcers. MPEP 2173.05(i). All other rejected claims depend from these claims directly or indirectly. *Conneely et al.* is now distinguished from the pending claims as amended. Applicant respectfully requests the rejection be withdrawn.

**IV.** Claims 15-51 are provisionally rejected under the judicial doctrine of obviousness-type double patenting over co-pending US Patent Applications 10/733,621 and 10/728,521.

Applicant respectfully submits that these provisional rejections are the only rejections still pending in view of the foregoing response. US Patent Applications 10/733,621 and 10/728,521 have priority/filing dates of 12-12-2002/12-11-2003 and 12-06-2002/12-05-2003, respectively. The instant application has priority/filing dates of 09-16-2002/09-16-2003. Thus, of the three applications, the instant one is the earliest. In addition, other basis of rejection are currently outstanding against all claims in the other applications. Consequently, the provisional rejections should be withdrawn and the instant application allowed to issue. MPEP § 804 (I.B.1.).

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02652US1 from which the undersigned is authorized to draw.

Dated: JANUARY 16, 2007

Respectfully submitted,

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